IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.356 OF 2005

Dattaram A. Awate)
Age abouit 54 yrs. Indian)
Inhabitant, residing at present)
Milind Kadam, Vad Naka, NGAR)
Bhari Temple, Siddhakala)
Apartment, Chiplun, Tal.Chiplun)
Dist. Ratnagiri.)...Petitioner

Versus

1. State of Maharashtra,)
2. C.I.D. Ratnagiri.)...Respondents

Mr.C.K.Pendse for the petitioner
Mr.B.H.Mehta, APP for respondent No.1 State

CORAM : R.M.S.KHANDEPARKAR &
P.V.KAKADE, JJ.
DATE : 25TH AUGUST, 2005

ORAL JUDGMENT : (Per Kakade, J.)

1. Heard. Rule, by consent rule is made returnable forthwith.

2. By the present Petition the petitioner is seeking the order of transfer of investigation in Sessions Case No.19 of 2003 pending before the Sessions Court, Ratnagiri, pertaining to C.R. No.70 of 2001 of Chiplun Police Station to Special Branch of C.I.D. Mumbai or any other investigating agency on the ground that the investigation made by local Chiplun Police Station as well as District C.I.D. is carried out not only in haphazard manner, but to hush-up the crime by suppressing the facts and destroying material pieces of evidence as well as with the intention to protect the accused contrary to the provisions of law.

3. At this juncture we may note that the impugned incident took place within the jurisdiction of Chiplun Police Station, District Ratnagiri, the complaint was lodged at Guhagar Police Station, which was transferred

to Chiplun Police Station where investigation was commenced by the local police. However, due to various allegations made by the Petitioner the matter was transferred for investigation to local C.I.D. Branch under C.I.D. Ratnagiri, who conducted the investigation and filed the charge-sheet and eventually the case was committed to the Court of Sessions, Ratnagiri (Sessions Case No.19 of 2003) for offences punishable under Sections 498-A and 306 r/w 34 of the Indian Penal Code against two accused persons. However, in the Sessions Court the petitioner made further application alleging that the C.I.D. Ratnagiri had not done proper investigation and therefore, there was need of further investigation in the case, which application came to be allowed by the learned Sessions Judge, Ratnagiri with direction that C.I.D. Ratnagiri shall carry out further investigation under Section 173(8) of Criminal Procedure Code. It was further directed by the learned Sessions Judge that C.I.D.Ratnagiri, if found appropriate, may take guidance from C.I.D. Crime Branch, Mumbai. While passing the said order the learned Sessions Judge was of the view that it was not within his jurisdiction to specify any particular officer or branch to take up the investigation and hence said order came to be passed.

Therefore, it is submitted by the petitioner, the present writ petition is filed for two reasons, firstly for seeking proper direction in this regard and secondly for necessary direction to conduct proper investigation in the case of death of his young married daughter.

4. It is the case of the petitioner that his daughter was married to one Vijay Chavan, one of the accused in the case. Said Darshana was serving as a nurse and thereafter for some time receptionist with Dr.Mohite, the other accused, at Chiplun and had left the job after her marriage, which was allegedly settled by Dr.Mohite acting as a middle person. The accused Vijay Chavan was working as a X-ray technician in Dr.Mohite's dispensary. Darshana's dead body was seen at the sea shore of Velneshwar, Tal. Guhagar at the distance of about 50-55 km. from Chiplun where she resided, at about 2.00 p.m. on 11.5.2001 by some villagers. The body was found in half naked condition in the sense that she was wearing Payjama, but all clothes on upper body were missing. The body was seen on the sea shore by some villagers and police were informed. Accidental death Register No.21 of 2001 was registered at Guhagar Police Station on the same day at

about 5.45 p.m. Post mortem was conducted in due course at Primary Health Centre, Guhagar in the evening of 12.5.2001 and their finding was to the effect that cause of death was due to asphyxia. The body was identified by one Milind Maruti Kadam, resident of Chiplun and message was sent to the father of the deceased. At the time of panchanama of scene of incident, green colour Dupatta was found on the distance of about 200 meters away from the dead body. Body was claimed by the father of the deceased. He expressed his suspicious regarding death to the police. The enquiry report was made initially by Guhagar Police Station and subsequently by Chiplun Police Station and finally on 20.5.2001 the Petitioner filed his complaint at Guhagar Police Station against both the accused persons for offence under Section 498-A and 306 r/w 34 of Indian Penal Code alleging that cruelty to his daughter Darshana driven her to commit suicide. The same was recorded and was transferred to Chiplun Police Station for further investigation and it was registered as C.R.No.70 of 2001. The investigation was commenced, in which course Statements of various people were recorded.

. Being dissatisfied by the course of

investigation conducted by Chiplun Police Station, the Petitioner made grievance in that regard and approached to various authorities including Deputy Chief Minister of the State and finally the investigation was handed over to C.I.D. Ratnagiri on 29.10.2001. The application was made by the concerned authorities to J.M.F.C., Chiplun for further investigation under Section 173(8) of Criminal Procedure Code and further investigation was conducted by C.I.D. The Charge-sheet was finally filed in the court and the case was committed to the Court of Sessions, Ratnagiri, where, as noted earlier, the Petitioner made further application, which came to be allowed, consequent to which the present petition is filed.

5. We have heard at length the learned counsel for the Petitioner and the learned APP, who was all throughout assisted by the Investigating Officer. We have perused all the records placed before us in relation to the investigation carried out by the police. We have also called for entire original record pertaining to the crime from Guhagar Police Station, Chiplun Police Station as well as office of C.I.D.Ratnagiri for our scrutiny. The investigating

officer of C.I.D.Ratnagiri has also filed his affidavit pursuant to our direction. The affidavit is on record.

. It was submitted on behalf of the State in support of the affidavit of Mr.Dhamnekar, Inspector of Police that the investigation was carried out in proper manner not only before the charge-sheet was filed but also subsequent to the order passed by the learned Sessions Judge in this regard. In other words, according to the Investigating Officer, no stone is left unturned to seek the truth in this case. However, on scrutiny of the entire record and after hearing both the parties we prefer to disagree with this proposition.

6. It is seen from the record that from February 2000 till January 2001 Darshana was working as a nurse in the private clinic of accused No.2 Dr.Mohite. In that clinic accused No.1 Vijay Chavan, husband of Darshana, was working as Compounder or Technician. Somewhere in the month of December,2001 Dr.Mohite called the Petitioner to his clinic and informed him that his daughter Darshana had fallen in love with Vijay Chavan, which fact was confirmed and upon assurance given by Dr.Mohite with regard to character of Vijay Chavan and

also upon giving an undertaking that he would take care of the couple to look after their well being the petitioner consented to the marriage of his daughter Darshana with Vijay Chavan, which was solemnised on 19.3.2001. It is alleged by the petitioner that on the very second day of the marriage Vijay Chavan started ill-treating Darshana, she was virtually forced to abandon her ties with the petitioner and his family. On 10.5.2001 Vijay Chavan called the petitioner inquiring whether Darshana had gone to his place, as she was not in the house. This aspect shows that Darshana was missing from 10.5.2001. No whereabouts of Darshana were traced till her dead body was found on 12.5.2001 at the sea shore of Velneshwar on the distance of about 50-55 kms. from Chiplun. It is alleged by the petitioner that ultimately his FIR was recorded on 20.5.2001. The petitioner was visiting Chiplun Police Station alleging that accused persons had committed Darshana’s murder, but the police manipulated it and recorded the complaint for offence punishable under Section 498A and 306 read with 34 of I.P.C. Interestingly, in the meantime accused No.2 Dr.Mohite preferred an application for anticipatory bail and therefore, the petitioner was satisfied that the local police were in fact protecting

the accused persons more particularly Dr.Mohite, but due to public outburst the investigation was handed over to C.I.D.

. We have critically perused the investigation papers of Chiplun Police Station as well as C.I.D. investigation in this case and we found that no qualitative improvement in the investigation was noticed in CID investigation. In fact, the record sufficiently shows that C.I.D. Ratnagiri had toed the line of the local Chiplun Police Station leaving behind the big question marks pertaining to technical and physical circumstantial evidence on record.

7. We must take into account that Darshana was a 25 years young lady, married to accused no.1 Vijay Chavan hardly about two months ago, and Dr.Mohite, with whom she was serving, had played role of middleman in the marriage. In such circumstances, why the young lady should take decision to commit suicide suddenly? This question is not at all answered by the investigating authorities. In other words, even if she wanted to commit suicide, she could do it at Chiplun and had no business to go to strange place like Velneshwar at the

distance of more than 50 kms. to drown herself in half naked position. If at all she wanted to commit suicide at the spur of moment, in all probability she would have done so at Chiplun itself at her marital home or elsewhere.

. It is also to be noted that the dead body was found in half naked position, having only Payjama on her person and all clothes from upper body were missing. In our considered view, no young middle class married lady would choose to become half naked in order to enter into the sea waters to commit suicide. It is also to be noted that no sea-waves, howsoever forceful, would be sufficient to remove the Kamij from her upper body prior or after death in water. This aspect is indicative of suspicious circumstances involving her husband Vijay Chavan and more particularly role played by Dr.Mohite. This is especially so, when there is absolutely no investigation made with regard to possibility of intimate relationship between deceased Darshana and Dr.Mohite, since prior to her marriage with Vijay Chavan, Dr.Mohite’s compounder. The affidavit filed by the Investigating Officer and the file relating thereto clearly shows that only cursory attempt to trace

movements of Dr.Mohite were made during the relevant period. However, we are satisfied that no serious attempt is made to trace movements of Dr.Mohite during the relevant period, especially when investigating officer had made bald statement on the basis of some record that Dr.Mohite did not move from his dispensary on the given date, and had gone to meet some bereaved family at Sangli on 13.5.2001. Mere recording the statements of S.T. Drivers and Conductors, and few persons from Velneshwar, would not be sufficient to pin-point as to who was accompanying Darshana at the relevant time, especially when she disappeared on 10.5.2001 from her home. There is absolutely no investigation regarding Dr.Mohite's movements on that particular day or night, especially when he owned his own car and drove it himself.

8. Next suspicious circumstances is regarding forensic evidence. It is obvious from the record that Post mortem was conducted and death was attributed due to asphyxia. It is also revealed from the record that there was no water in lungs or stomach of the deceased, but there was sand in the stomach of Darshana. The said sand found in stomach was also matched with the sand of

Velneshwar beach. The Chiplun Police were aware of the fact and therefore, made query with the medical officer in this regard, who opined that if pressure is applied with force in sand, then such sand can go into lungs and stomach and death can occur due to this. If it was so, the gravity of the situation increases still more when possibility cannot be ruled out that Darshana's head was pressed in the sands forcefully, as a result of which she swallowed sand. Only fact that no external injuries are found on the body of Darshana, would not be sufficient to jump in the conclusion that possibility of application of force in such manner can be ruled out. In any case, there is absolutely no investigation made out by the C.I.D. in this regard nor tried to reveal the truth behind the unfortunate incident.

9. These are few salient question marks, which obviously arose after going through the investigation made by the concerned authorities in this regard, and therefore, we are of the considered view in the facts and circumstances that further investigation has to be made in this regard especially in order to explore the possible role played by either Dr.Mohite or Vijay Chavan or some third person, or both the accused in collusion

together. Therefore, considering the entire approach of the investigating officer and the manner in which the investigation in the case in hand had been carried out, there is reason to doubt the efficiency and competency of the present investigating officer to conduct the investigation in relation to this serious offence. We are also satisfied that no purpose will be served if further investigation is made by any C.I.D. Branch at Mumbai taking into account the peculiar facts and circumstances in this case. Therefore, we are of the view that proper and competent agency to make further investigation in this heinous offence would be Central Bureau of Investigation, to whom we propose to hand over the case by issuing Stay Order for trial of the Sessions Case pending before the Sessions Judge, Ratnagiri, pending further investigation.

10. In the result, the Petition succeeds in terms of prayer clause (a). The rule is made absolute. It is hereby directed that the further investigation contemplated under Section 173(8) of Criminal Procedure Code shall be conducted by C.B.I. at Mumbai for which purpose all the original related records shall be transmitted to them by C.I.D. Ratnagiri. The C.B.I.

is directed to expedite the process of investigation as the case is quite old. It is hereby made clear that the observations made herein above shall not influence the process of investigation in any manner whatsoever and the concerned authorities of the C.B.I. shall proceed with the investigation as per relevant rules and laws.

(R.M.S.Khandeparkar,J.)

(P.V.Kakade,J.)